

REMARKS

Claims 1-8 and 10-18 were originally presented in this application. Claims 10-18 were renumbered as claims 9-17. In response to the Election/Restriction Requirement imposed by the Examiner, Group I, claims 1-11 (as renumbered) are hereby elected without traverse and without prejudice to pursue the subject matter of the non-elected claims in a subsequent application. Claims 12-17 are cancelled. Claim 3 has been amended. Claims 1-11 remain pending in the application. For at least the following reasons, reconsideration and allowance of claims 1-11 is requested.

Claims 1-11 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the Examiner rejected the use of the term "body" as being vague and indefinite and suggested the use of the word "sheet" or similar language. This rejection is respectfully traversed. Applicant disagrees with the Examiner's position that the use of the term "body" is vague and indefinite. Applicant has used the term "body" throughout the specification to define the structure of the wall patch. This term has both meaning to those of ordinary skill in the art and further has been given clear and definite meaning by virtue of Applicant's own use of the term throughout the written description. *See, e.g., Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005).

The Examiner also suggested use of the phrase "having an upper and an opposing lower surface" to describe the surfaces of the "body" in claim 1. Additionally, the Examiner stated that it would appear desirable if the "aperture" were described more specifically than as just being "in the body". It is unclear, however, whether these are simply suggestions or whether the claims will remain rejected absent modification of the claims to include such limitations. Clarification from the Examiner is respectfully requested. In any event, these recitations are believed to add structural limitations to the claims that are unnecessary to comply with the requirements of 35 U.S.C. § 112, second paragraph.

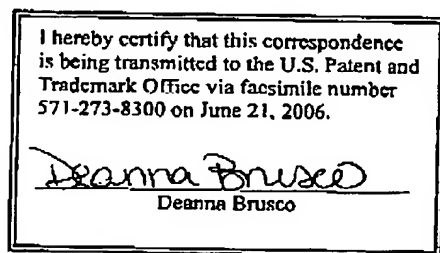
And finally, the Examiner rejected the use of the phrase "comprises a texture" in claim 3 as being vague and indefinite. Claim 3 has been amended to more fully recite that the texture is provided through a textured surface. These rejections under 35 U.S.C. § 112 are believed to be overcome and allowance of the claims is respectfully requested.

The Examiner has rejected Applicant's claim to priority from U.S. Patent Application Serial No. 10/618,166 and U.S. Patent Application Serial No. 09/595,635 (now U.S. Patent No. 6,607,621). Applicant appreciates the Examiner's identification of the defective oath and

mistaken omission of Randall Eric Swanson as an inventor of this application. The identified inventor, Jerry Brower, is the inventor of the new subject matter added to the CIP and the owner of all rights to the parent applications. Applicant therefore mistakenly omitted Mr. Swanson from the application without deceptive intent on the part of either inventor. A newly executed oath and declaration of Jerry Brower is submitted herewith, along with a copy of the original oath and declaration of Randall Eric Swanson submitted with the parent applications. Since the Examiner's identification of this defect, Mr. Swanson has been contacted on multiple occasions requesting him to sign a new oath and declaration regarding this application, but, having previously assigned all his rights to Jerry Brower, has refused further cooperation. Applicant therefore respectfully requests correction of inventorship on this application to reflect co-inventorship by Randall Eric Swanson and is entitled to priority from the earlier applications with respect to the common subject matter. Any fee for this request should be charged to deposit account no. 13-1703.

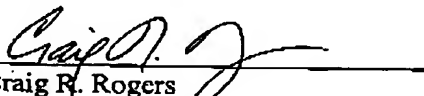
Claims 1-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Swanson, U.S. Patent No. 6,607,621 taken either individually, or in view of either Owens et al or Hoffman, Sr. '949, and for claims 6-8 in further view of Parker '222, the latter reference being taken as evidence of the state of the art. Since, as explained above, however, Swanson is not appropriately considered prior art to the instant invention, Swanson cannot be used as a primary reference in rejecting the claims. Claims 1-11 are therefore believed to be in condition for allowance.

For the foregoing reasons, reconsideration and allowance of claims 1-11 of the application as amended is solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.



Respectfully submitted,

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